

Whether a particular tax is included in the selling price for computing Retailers' Occupation Tax, one must look at the statute or tax act to see upon whom the taxing government (whether federal, state or local) has placed the legal incidence of the tax. See 86 Ill. Adm. Code 130.435. (This is a GIL.)

May 2, 2003

Dear Xxxxx:

This letter is in response to your letter dated January 1, 2003. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

This letter is to request information regarding individual City gasoline tax deductions as opposed to a ruling about a specific instance. After making several calls to the 'Taxpayer Information Service', we were advised to contact your office for clarification.

As you are aware, there are several gasoline taxes at the retail level that are added to the pump price. Among these are the State Motor Fuel Tax and State Sales Tax. Both of these items are deducted on page two of form ST-1 and we have no problem with these taxes. However, there are other taxes imposed by Counties and or Cities that are not covered by the directions on form ST-1 directions. We specifically refer to the County gas tax, the City gas tax and other taxes imposed by units of Government. Several of our customers have advised us that their accountants routinely deduct these taxes from their State Sales Tax returns. Their contention being that to do otherwise would, except for the deductions allowed for State Motor Fuel Tax and State Sales Tax, result in being taxed by the State on taxes remitted to other units of Government. This of course resulting, in effect, to double taxation.

The instructions for completion of Form ST-1 are very vague re these additional taxes and line 16 seems to be the only place to make this deduction if in fact they are deductible.

We realize you have many more serious problems on which to spend your time but in our instance, these taxes amount to a substantial sum and it is in our best interest obtain a definite answer to this question. May we please have an answer re their deductibility and the line item on which to make the deduction as soon as possible. Thank you.

DEPARTMENT'S RESPONSE:

Section 2 of the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/2, imposes a tax upon persons engaged in the business of selling at retail tangible personal property, including motor fuel. Retailers incur Retailers' Occupation Tax (sales tax) liability upon their gross receipts from the sale of tangible personal property.

Section 1 of the Retailers' Occupation Tax Act (35 ILCS 120/1) defines "gross receipts" from sales of tangible personal property at retail to mean the total selling price or the amount of such sales. The "selling price" or "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, and shall be determined without any deduction on account of the cost of the property sold or any other expense whatsoever. See 86 Ill. Adm. Code 130.410. Accordingly, other taxes that are part of the selling price are subject to Retailers' Occupation Tax.

When deciding the question about whether a particular tax is included in the selling price for computing Retailers' Occupation Tax, one must look at the statute or tax act to see upon whom the taxing government (whether federal, state or local) has placed the legal incidence of the tax. Please see the enclosed copy of 86 Ill. Adm. Code 130.435 entitled State and Local Taxes Other Than Retailers' Occupation Tax.

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. On the other hand, when the legal incidence of a tax is not imposed on the consumer but is imposed at a higher level in the distribution chain, e.g. upon the manufacturer, importer, or distributor, then the amounts of the retail selling price of the tangible personal property that represents these taxes is includable in the base and cannot be deducted in computing Retailers' Occupation Tax.

Please note the Illinois Motor Fuel Tax collected by sellers of motor fuel may be deducted by such sellers for purpose of computing the Retailers' Occupation Tax because the legal incidence of the Motor Fuel Tax is on the consumer and is not considered to be part of the selling price of the fuel. See 86 Ill. Adm. Code 130.435(a)(1). These amounts should be reported on Item 7 of the ST-1 worksheet for Line 2 (located on the reverse side of Form ST-1).

Provisions of Section 2a of the Motor Fuel Tax Act (35 ILCS 505/2a) impose an Underground Storage Tank Tax, on and after January 1, 1990 and before January 1, 2013, at the rate of threetenths of a cent per gallon upon the privilege of being a receiver in this State of fuel. Beginning January 1, 1996, provisions of P.A. 89-0457 caused receivers of fuel to become subject to an Environmental Impact Fee. The Underground Storage Tank Tax and the Environmental Impact Fee are includable in gross receipts subject to Retailers' Occupation Tax because those taxes are imposed at the manufacturer or importer level (see 35 ILCS 505/1.20 for the definition of receiver) and not upon the consumer. See subsection (c) of Section 130.435. These amounts must be included in the gross receipts on Line 1 of Form ST-1.

The County Motor Fuel taxes that are authorized in DuPage, Kane, and McHenry Counties are imposed on the retailer and must also be included in the gross receipts on Line 1 of Form ST-1. See 55 ILCS 5/5-1035.1. However, the Chicago Vehicle Fuel Tax and the Cook County Motor Fuel Tax are all imposed on the consumer and therefore are deductible from gross receipts on Form ST-1. These amounts should be reported on Item 16, labeled "Other", of the ST-1 worksheet for Line 2 (located on the reverse side of Form ST-1), and should not be reported on Item 7 of that worksheet.

Federal taxes are not deductible from the selling price or gross receipts for purposes of calculating sales tax when the incidence of the tax falls upon the manufacturers, wholesalers, or importers. Please refer to the enclosed copy of 86 Ill. Adm. Code 130.445. Accordingly, the federal excise taxes on gasoline and diesel are not deductible because their legal incidence falls upon the manufacturers,

wholesalers, or importers rather than upon the customers or end users. As such, they are costs of doing business that are not deductible from the base when calculating sales tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.